

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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25989**FILE:** A-67190**DATE:** August 12, 1983**MATTER OF:** Forest Service--Requirement to procure from
Federal Prison Industries Inc.

DIGEST: Forest Service, Department of Agriculture is not required to request clearance from Federal Prison Industries Incorporated (FPI) when making purchases from private sources using funds appropriated by Public Law 98-8. 18 U.S.C. § 4124 generally requires Federal agencies to buy all FPI products which meet their requirements from FPI rather than from private sources. Public Law 98-8 (98th Cong., 1st sess., 97 Stat. 13 (March 24, 1983)) is an emergency measure which appropriates funds for projects designed to combat the economic recession occurring at the time of its passage. Specific legislation prevails over general. Since private purchases further the Act's purposes the requirement to purchase from FPI does not apply. B-152722, August 16, 1965; 15 Comp. Gen. 415 (1935); A-67191, November 9, 1935, March 27, 1936 cited.

The Director of Administrative Services, Forest Service, Department of Agriculture requested our decision on whether the statutory requirement to make purchases from Federal Prison Industries, Inc. (FPI) applies when the Service is conducting activities funded by appropriations made in Public Law 98-8.

We hold that the Forest Service is not required to make purchases from Federal Prison Industries, Inc. when carrying out its responsibilities under Public Law 98-8. Requiring such purchases from FPI is inconsistent with the law's purposes as explained below. Accordingly, the Service may procure goods from private sources without requesting FPI clearances when spending funds appropriated by Public Law 98-8.

Public Law 98-8 (98th Cong, 1st Sess., 97 Stat. 13 (March 24, 1983)) is an emergency appropriations measure which Congress enacted in response to the economic recession

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occurring at the time of its passage. Generally, the law makes appropriations to Government agencies which are designed to ease unemployment and stay the rise of business failures. A corollary purpose is to "hasten or initiate Federal projects and construction of lasting value to the Nation and its citizens." The Act is prefaced with the following statement of Congressional findings:

"It is the sense of the Congress that the continued economic recession has resulted in nearly fourteen million unemployed Americans, including those no longer searching for work, rivaling the actual numbers of unemployed during the Great Depression. Other millions work only part-time due to the lack of full-time gainful employment. The annual cost of unemployment compensation has reached the staggering total of \$32,000,000,000. The hardships occasioned by the recession have been much more severe in terms of duration of unemployment and reduced percentage of unemployed receiving jobless benefits than in previous recessions.

"Actual filings of business related bankruptcies for the year ending June 30, 1982, reached a total of seventy-seven thousand as compared with a prior year figure of sixty-six thousand. Business failures are up 49 percent compared to one year ago. Delinquencies are many times greater. The American farmers are more than \$215,000,000,000 in debt. Hundreds of thousands of farmers are faced with bankruptcy.

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"Under these circumstances, the Congress finds that a program to provide for neglected needs of the Nation which results in productive jobs, and to provide humanitarian assistance to the indigent and homeless, to be very strongly in the national interest."

Consistent with these findings, the Act provides appropriations to the Forest Service as follows:

"PRESERVING THE NATIONAL FOREST SYSTEM

"To restore, repair, and provide forest roads, trails, and other existing facilities which are part of the real wealth of this country, there is appropriated an additional amount of \$25,000,000 to remain available for obligation until September 30, 1984, for the 'National Forest System'.

"In order to provide jobs, to improve the growth rate of existing forested land inventories, and to decrease the number of deforested acres of Forest Service lands, there is appropriated an additional \$35,000,000 for 'National Forest System', Forest Service.

"In order to provide jobs which will result in the construction of real assets for this country, an additional amount of \$25,000,000 is appropriated, to remain available until expended, for 'Construction', Forest Service."

Federal Prison Industries, a government corporation of the District of Columbia, conducts a program of industrial training and employment for inmates of Federal penal and correctional institutions under the provision of 18 U.S.C. §§ 4121-4128 (1976). The program is designed to give inmates the opportunity to acquire knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release. 18 U.S.C. § 4123 (1976). In the process, the inmates produce various goods for sale by FPI.

Federal agencies are required to buy all FPI products which meet their requirements from FPI rather than from private sources. 18 U.S.C. § 4124 (1976). Generally, an agency must obtain a clearance from FPI in order to purchase an item which is available through FPI from another source. 41 C.F.R. § 1-5.408 (1982).

The Forest Service indicates that it needs to buy items which are available from FPI to carry out its responsibilities under Public Law 98-8 but it questions whether requiring it to purchase these items from FPI is consistent with the Act's purposes. For example, the Service acquires roadsigns in providing forest roads and trails and it needs paint brushes and tarpaulins to restore forest facilities. These items may be obtained from FPI or from local private sources. Purchasing needed items from private sources furthers the Act's purposes of counteracting the continued economic recession by providing emergency expenditures to create productive jobs and aid

business. Employment is created because labor is used to produce and ship the goods and business is aided because the vendor sells items he otherwise would not have and thereby adds to his profit. However, such private procurements (without FPI clearances) would appear to be in conflict with the requirements of 18 U.S.C. § 4124 (1976).

Because of the Act's specific nature, furthering its purposes may take precedence over the more generally applicable restrictions of 18 U.S.C. § 4124 (1976). It is a well-established principle of statutory construction that when construing two seemingly conflicting pieces of legislation the more specific provision governs over the general. B-152722, August 16, 1965. Public Law 98-8 is the more specific Congressional statement. It is emergency legislation directed at alleviating an immediate economic problem while 18 U.S.C. § 4124 is applicable to agencies of the Government generally and indefinitely. It appears that at this time Congress is more concerned that the funds which Public Law 98-8 appropriates be used to provide expeditious aid to private industry and labor rather than that they be used to provide support for the ongoing inmate training program. Accordingly, when the Forest Service intends to expend funds appropriated by Public Law 98-8, it need not seek FPI clearance.

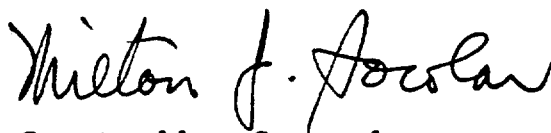
We have held previously that agencies may make purchases without requesting FPI clearance under similar statutes, as the Service notes. In 15 Comp. Gen. 415 (1935) we considered whether the Army was required to obtain a certificate of clearance before purchasing a brush from a private source with funds made available by the Emergency Relief Appropriations Act of 1935. That Act made appropriations, "to provide relief, work relief, and to increase employment by providing for useful projects." We concluded that "[t]he making of such purchases from the Federal prisons would appear to be out of line with the purpose for which the appropriation was made" and therefore a certificate of clearance was unnecessary. 15 Comp. Gen. 415. (See also A-67191, November 9, 1935, re purchase by the Army of tarpaulins for use as truck covers in Civilian Conservation Corps Camp with funds appropriated by Emergency Relief Appropriation Act of 1935.)

In A-67190, A-67191; March 27, 1936, we were asked to decide whether the Federal Emergency Administration of Public Works was required to seek FPI clearance when purchasing articles with funds appropriated to carry out the purposes of the National Industrial Recovery Act of 1933. 48 Stat. 195 (June 16, 1933). That Act's declaration of policy read:

"* * * It is hereby declared to be the policy of Congress * * * to promote the fullest possible utilization of the present productive capacity of industries, * * * to reduce and relieve unemployment, to improve standards of labor, and otherwise rehabilitate industry * * *."

Section 206 specified that no convict labor was to be used on any project the Act authorized. However, the implementing regulation provided that no materials produced by convict labor were to be directly incorporated into projects, "except in those cases in which the use of such materials is required by applicable statutes." We held that since no clearance request was required in view of the Act's provisions and implementing Executive Orders, the GAO would not object to a change in the implementing regulations to permit procurement from the private sector without first securing clearance from the FPI. Such a change was subsequently made.

The rationale of the cases discussed above is generally applicable here because the purposes of the earlier acts are essentially the same as Public Law 98-8. Accordingly, the Forest Service need not request certificates of clearance from FPI when making purchases using funds which Public Law 98-8 appropriates.

for 
Comptroller General
of the United States